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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,337	01/23/2004	Jeffrey A. Chambers	LP 4965 CNT	4968

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WILMINGTON, DE 19805

EXAMINER

VU, STEPHEN A

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/762,337

Applicant(s)

CHAMBERS ET AL.

Examiner

Stephen A Vu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/23/04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/23/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group II in the reply filed on June 16, 2004 is acknowledged.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 50 and 80. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: applicant needs to include the information that the application 10/007,578 has now become U.S.

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Patent No. 6,763,453, issued on May 18, 2004 under the heading "Related Applications" .

Appropriate correction is required.

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because the abstract contains the phrase "The invention provides". Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 16 recites the limitation "the seat cushion" in line 7 and "the warp direction" in lines 9-10. There is insufficient antecedent basis for these limitations in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maruzzo et al (#4,400,030).

Maruzzo et al show a method of replaceably upholstering a chair comprising (a) providing a first stretch slipcover (16) having a front portion and side portions (46) for covering a front surface and at least part of the side surfaces of a back cushion of the chair (12), (b) providing a second stretch slipcover (14) having a top portion and side portions (24) for covering to a surface and at least part of the side surfaces of the seat cushion of the chair, (c) stretching the first stretch slip cover of step (a) over the back

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cushion of the chair, (d) releasing the first stretch slipcover to allow the first stretch slipcover to grip the back cushion, (e) stretching the second stretch slipcover of step (b) over the seat cushion of the chair, and releasing the second stretch slipcover to allow the second slipcover to grip the seat cushion, and (f) releasing the second stretch slipcover to allow the second stretch slipcover to grip the seat cushion. However, Maruzzo et al do not disclose the fabric to have a minimum recovery force of 200 grams at 25% extension in directions parallel and perpendicular to a warp direction. It would have been obvious to one having ordinary skill in the art at the time the invention was made to design the fabric of Maruzzo et al's invention to have a minimum recovery force of 200 grams at 25% extension, since it has been held that discovering an optimum or workable ranges involves only routine skill in the art.

With claim 19, the fabric has peripheral edges of the slipcovers.

Claims 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maruzzo et al (#4,400,030) in view of Moss (#6,354,661).

The limitation in claim 17 defines the fabric as being a spandex material. The term "elastane" is another name for spandex according to the wikipedia website (<http://en.wikipedia.org/wiki/Elastane>).

Maruzzo et al disclose the claimed invention except for the fabric to be a spandex material.

Moss teaches a cover (22) being composed of a spandex material (see col. 2, lines 38-41), wherein the spandex material is able to be stretched repetitively and still recover its original length and is resistant to body oils, perspiration, lotions, and detergents. It would have been obvious to one of ordinary skill in the art at the time the

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invention was made to construct Maruzzo et al's slipcover (16) using a spandex material as taught by Moss, because the spandex material is able to be stretched repetitively and still recover its original length and is resistant to body oils, perspiration, lotions, and detergents.

Allowable Subject Matter

Claim 20 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McMurtry, Collier et al, Livingston, De Giacomi, and Barattini et al are cited as showing similar types of slipcover.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A Vu whose telephone number is 703-308-1378. The examiner can normally be reached on M-F from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Stephen Vu". The signature is fluid and cursive, with the first name "Stephen" written in a larger, more prominent script than the last name "Vu".

Stephen Vu
September 1, 2004